IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5201 OF 2004

Sethuraman Subramaniam & Anr. ..Applicants.

V/s.

State Maharashtra & Ors. ..Respondents.

Shri Manish Bohra for the Applicants.
Shri A.S. Gadkari, APP for Respondent No.1.

CORAM : A.M.KHANWILKAR, J.
DATED : DECEMBER 22, 2004

PC :-

1. Shri Manish Bohra for the applicants. None appears for Respondent No.2 though served. Respondent No.3 is a formal party. Shri Gadkari, waives notice for respondent No.1-State.

2. The applicants are original accused Nos.6 & 7. The short question involved in the present petition is whether any case is made out against the present applicants accused Nos. 6 & 7 to indicate their complicity in the commission of the offence committed by the Company. Even on a fair reading of the complaint, it is not possible to suggest that there is any allegation to indicate the complicity of the aplicants in the commission of the alleged offence by

the accused company. It is not in dispute that the applicants are not signatories to the cheques in question. As there is no allegation against the applicants to indicate their complicity in relation to the offence committed by the accused company within the meaning of section 141 of the Act, the criminal action qua them cannot be allowed to proceed. Recently, I had occasion to consider the question as is required to be considered in the present application, in the case of Madanlal Taparia & Anr. vs. The Bank of Rajasthan Ltd. & Anr. in criminal writ petition No. 2241/2004 decided on 14th December, 2004. It is well settled that merely because the person is director of the accused company, does not make him liable for the offence committed by the Company. Something more has to be alleged and established, which is clearly lacking in the present complaint. In other words, no material facts are alleged in the complaint as filed so as to make the applicants liable within the meaning of section 141 of the Act.

3. Accordingly, this application succeeds and the same is allowed in terms of prayer clause (a) to the extent of applicants- accused Nos.6 and 7 only.

4. Ordered accordingly.

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